REMARKS

Claims 1–32 were pending at the time of the Office Action. Claims 1, 14, 16, 19, 20 and 26 have been amended. Claim 22 has been cancelled. Claims 33 and 34 have been added. Figure 9 has been amended. These amendments add no new subject matter and are supported by the specification at, for example, original claims 5, 10, 12, 14, 15, 16, 22, 24 and 25; Figures 5A–C and 6A–C.

The invention is a dual-function batting swing trainer for practicing two related baseball batting swing drills. A split-grip drill conditions the batter to begin the swing with the bat close to his body and elbows bent for maximum power and control. A two-handed drill conditions the batter to employ the bent-elbow techniques learned in the split-grip drill, while keeping both hands together as in a conventional baseball swing. The drills are related to each other by tactile and audio feedback produced when a slide strikes a stop at either end of the batting swing trainer.

The split-grip drill begins with the hands spread apart, the elbows bent and the bat at shoulder height. The hands are brought together during the swing on a handle and slide, respectively. The position of the swing at which the hands meet is emphasized to the batter by the sound and feel of a slide buffer striking stopping means adjacent the handle. The two-handed drill begins with the hands together on the handle, the elbows bent and the bat at shoulder height. As the batter performs an effective baseball swing, with elbows bent to hold the bat close to the body, the slide accelerates to strike the bat head with a clack. Through practice, the batter learns to accomplish both drills so that the sound is heard at the same position of the swing in each drill.

In response to a Protest filed May 15, 2002, Applicants refer to their replies set forth below to Section 102 and Section 103 rejections citing International Publication No. WO 99/26705. As explained below, the Kallassy publication (a) is not relevant prior art to the subject

application, (b) does not include enabling teaching for any baseball training device, and (c) does not provide motivation for a skilled practitioner to combine the "slidable stop" of the Kallassy publication with any baseball swing training device. As applicants note at page 3, lines 20–22 of the subject application:

> Because a golf club swing is different from a baseball bat swing, the Kallassy Swing Magic™ device does not offer any benefit when teaching a person proper baseball bat swinging technique.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5). However, Figure 9 has been amended to include reference numeral 46. Therefore, the objection to the drawings may now be withdrawn.

The specification is objected to under 37 CFR Section 1.75(d)(1) for failing to provide proper antecedent basis. However, the specification has been amended to provide antecedent basis at page 6, line 3; page 9, line 8; page 9, line 10; page 6, line 3; page 11, lines 16 and page 12, line 20. Additionally, Claim 14 has been amended so as to depend on Claim 1. Therefore, the objection is no longer appropriate and should be withdrawn.

Claim 5 stands rejected under 35 U.S.C. Section 112, first paragraph, on the grounds that there is insufficient support in the specification for the bat to have a handle of a different weight. However, the specification has been amended at page 11, line 16 and page 12, line 20. Support for these amendments can be found, among other places, in original Claim 5. Therefore, the rejection of Claim 5 under Section 112, first paragraph, is inappropriate and may now be withdrawn.

Claim 15 and 16 stand rejected under 35 U.S.C. Section 112, second paragraph, for failing to point out and distinctly claim the invention. More specifically, Claim 15 is rejected on the grounds that there is insufficient support in the specification for the bat to have a head

adapted to receive interchangeable weighted members. However, Claim 13 has been amended and the specification has been amended at page 11, line 16. Accordingly, the rejection of Claim 15 is inappropriate.

Claim 16 is rejected on the grounds that it depends from and contradicts Claim 13. However, Claim 13 has been amended to depend from Claim 1. Therefore the rejection of Claims 15 and 16 under Section 112, second paragraph, may now be withdrawn.

Claims 1, 6 and 13 stand rejected under 35 U.S,C Section 102(b) as being anticipated by U.S. Patent No. 5,360,209, issued to Mollica. The Mollica patent describes a batting training device 10 comprising rod 22, weighted member 20, handle 12, and stop 28. Handle 12 reportedly emulates a traditional baseball bat handle. (Column 2, lines 12–17.) Weighted member 20 slides longitudinally along rod 22, where its progress is observed visually by the batter. The Mollica patent reports that weighted member 20 has a generally cylindrical configuration so that training device 10 is made to resemble a traditional baseball bat. (Col. 2, lines 25–28.) For example, see Figure 1. However, because the diameter of weighted member 20 is significantly greater than the diameter of handle 12, the Mollica patent does not teach the batting swing trainer specified by Claim 1, which recites that the diameter of the slide is substantially the same as the diameter of the handle.

Additionally, the batting training device of the Mollica patent is silent on the subject of means positioned on the shaft adjacent to the handle for stopping movement of the slide in the direction of the handle, as recited in Claim 1. The Mollica patent also lacks teaching regarding first and second buffers affixed to the end of the slide, as recited in Claim 1. Therefore, the rejection of Claims 1 and dependent Claims 6 and 13 under 102(b) over the Mollica patent is inappropriate and should be withdrawn.

Claims 1, 6, 8, 9, 11, 13, 14, 16, 17 and 19-23 stand rejected under 35 U.S.C. 102(b) as being anticipated by Kallassy publication No. WO 99/2605, which lists Kallassy as inventor and applicant. The Kallassy publication describes a golf swing training device having a slidable grip for one hand provided on the shaft of a modified golf club. However, the Kallassy publication includes no enabling teaching whatsoever regarding a baseball swing trainer, as recited in Claim 1.

At most, the Kallassy publication recites two sentences of vague speculation at page 14, lines 16-19:

> The present invention contemplates that similar concepts can have application for training in other sports. For example, a slidable grip could be used effectively with a baseball swing training device generally similar to a conventional baseball bat.

These two sentences constitute all of the "teaching" in the Kallassy publication regarding any baseball swing training device, and they contain no enabling teaching. A slidable grip is presumably a component for a golf training device, exemplified by slidable grip 20, slidable grip 100 and slidable grip 220 as described in the Kallassy publication. However, the Kallassy publication does not teach how, when, why or where the slidable grip is employed with a baseball swing training device. The test for enabling teaching is whether a practitioner of ordinary skill in the art could, as a result of reading the disclosure, and with the benefit of his previous knowledge, make and use the invention described without additional teaching or undue experimentation. These two sentences fail this test regarding any baseball swing training device with a slidable grip and, therefore, cannot support the rejection of Claims 1 or dependent Claims 6, 8, 9, 11, 13, 14, 16, 17 and 19–23.

Additionally, the Kallassy publication does not teach a generally cylindrical handle sized to accommodate both of a user's hands, as recited in claim 1. Also, the Kallassy publication

does not teach first and second buffers affixed to the ends of a slide, as recited in Claim 1. Moreover, the Kallassy publication fails to teach that the second buffer is adjacent the second end and that the second buffer emits an audible sound upon contacting the area of increased circumference, as recited in Claim 34. Therefore, the rejection of claim 1 and dependent claims 6, 8, 9, 11, 13, 14, 16, 17 and 19-23 under Section 102(b) over the Kallassy publication is inappropriate and should be withdrawn.

Claims 2 and 3 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over the Kallassy publication in view of U.S. Patent No. 4,671,508, issued to Tetreault. The Kallassy publication describes a slidable grip 20 for one hand on the shaft 12 of a modified golf club 10 to enable a golf trainee to separate his or her hands progressively during a back swing and bring them back together progressively during the down swing. Reportedly, this technique imprints proper swing mechanics in the mind of the trainee to be recalled reflexively in executing a conventional golf swing with the hands in a fixed grip relationship on the handle 14 of a golf club. "For example, the golf swing training device enables the trainee to maintain a substantially straight left arm while at the same time achieving a full shoulder turn and right arm cocking position. Once these two opposing motions have become instinctive through the training method, the trainee can keep the hands together in a conventional golf swing while achieving both proper lift arm position and full shoulder turn consistent with the proper golf swing." (Page 4, lines 17–23 of the Kallassy publication.)

The Kallassy application reports that maintaining the left arm in a substantially straight position during the backswing is an important and well-known feature of a golf swing (Page 10, lines 9–14.) The Kallassy application recites that the golf swing training device of the Kallassy invention enables the trainee to maintain a substantially straight left arm. (Page 4, lines 14–19).

For example, Fig. 7C of the Kallassy application shows the trainee having reached the top of the backswing with a substantially straight left arm (Page 9, lines 25–27; Fig. 7C). The Kallassy application maintains that repeatedly practicing the Kallassy method imprints important aspects of an effective golf swing, such as the straight left arm position, onto the trainee's muscle memory. (Page 10, line 24 to page 11, line 2).

In contrast, an effective baseball swing begins with both elbows bent. Exhibit 1 is evidence of the bent elbows baseball swing in the form of a photograph of Barry Bonds of the San Francisco Giants beginning his baseball swing in the recent World Series with both of his elbows bent. Exhibit 2 is additional evidence of the bent elbows swing in the form of a reprint of the cover of the July/August 2002 edition of Junior Baseball magazine, showing a youthful baseball player at the start of his swing with elbows bent. Accordingly, applicants respectfully request that the Examiner take official notice that an effective baseball swing begins with both elbows bent.

A person with ordinary skill in the art of baseball knows that both elbows must be bent, at least at the beginning, in order to perform an effective baseball swing. Because the Kallassy golf training device teaches trainees to keep their left arms substantially straight throughout the golf backswing, there would be no motivation to use it for baseball. The person with ordinary skill in baseball would not want to impair a trainee's baseball swing with the habit of keeping the left arm substantially straight. Therefore, the hypothetical combination of the teachings of the Kallassy patent with those of another reference, such as the Tetrault patent, which describes a baseball swing training device, is improper and cannot support a claim rejection.

Furthermore, even if the Kallassy publication and Tetrault patent teachings could be combined, they still do not produce the invention specified in dependent Claims 2 or 3, because

the hypothetical combination does not teach or suggest a generally cylindrical slide having a diameter that is substantially the same as the diameter of the handle, as recited in amended independent Claim 1 and dependent Claims 2 and 3.

Also, the hypothetical combination is inoperative unless either the Kallassy publication handle or the Tetrault patent handle is impermissibly modified in a manner that defeats its intended purpose. The Kallassy publication describes a golf club with handle 12 and slide 20. The Tetrault patent describes a baseball bat handle portion 14 wrapped with a flexible, deformable tape 15 composed of leather, rubber or plastic. Accordingly, the hypothetical combination produces, at best, a golf club handle wrapped with tape. The tape-wrapped golf club handle is useless for baseball swing training. Conversely, modifying the golf club handle of Kallassy to more closely resemble a baseball bat handle would make the Kallassy handle useless for golf training, thereby impermissibly defeating its intended purpose. Consequently, the rejection of Claims 2 and 3 Section 103(a) as being unpatentable over the Kallassy publication in view of the Tetreault patent is inappropriate and should be withdrawn.

Claim 5 stands rejected under 35 U.S.C. Section 103(a) as being unpatentable over the Kallassy publication in view of U.S. Patent No. 3,955,816, issued to Bratt. However, the Bratt patent describes a baseball practice bat. As set forth above with regard to the hypothetical combination of the teachings the Kallassy publication and the Tetrault patent, the skilled practitioner does not want to impair a trainee's baseball swing with the habit of keeping the left arm substantially straight and, therefore, would not be motivated by any recommendation of the Kallassy publication to combine the slidable grip with a baseball practice bat. Consequently, the hypothetical combination of the teachings of the Kallassy patent with those of the Bratt patent is improper and cannot support a claim rejection.

Additionally, the hypothetical combination of the Kallassy publication and Bratt patent teachings does not produce the invention specified in dependent Claim 5, because the hypothetical combination does not teach or suggest a generally cylindrical slide having a diameter that is substantially the same as the diameter of the handle, as recited in amended independent Claim 1 and dependent Claim 5.

Claims 7, 10, 12, 18, 24, 25 and 26–32 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over the Kallassy publication. However, the Kallassy patent is not relevant prior art to the subject application, because no skilled practitioner would believe that the teachings of a golf swing training device can be applied to baseball swing trainers. The golf ball is held stationary on the ground or on a tee while the golfer lifts the golf club over his head and then addresses the ball with the club head, typically performing several practice swings to the same point of contact with the stationary ball before striking it. Apparently, keeping the left arm straight aids the golfer in returning the club head repeatedly to the same point of contact with the stationary ball.

In contrast, the baseball is travelling in a looping trajectory at up to 100 miles per hour when the batter attempts to hit it with a horizontal swing delivered between the batter's shoulders and knees. It is impossible to determine the point of contact until the baseball has almost arrived. The batter usually fails to hit the baseball. When the batter does hit the baseball, he must reverse its direction of travel by applying a significant force.

Because the skilled practitioner is aware of these differences between the golf swing and the baseball swing, he would not expect to find solutions to baseball swing trainer problems in publications describing golf swing trainers. Therefore, the Kallassy publication is not relevant prior art and cannot support any rejection of the subject claims.

publications describing golf swing trainers. Therefore, the Kallassy publication is not relevant prior art and cannot support any rejection of the subject claims.

Moreover, the Kallassy publication does not teach or suggest a generally cylindrical handle, as recited in Claim 1 and dependent Claim 7. Nor does it teach or suggest a handle sized to accommodate both of a user's hands, as recited in Claim 1 and dependent Claim 7. Also, the Kallassy publication does not teach or suggest a generally cylindrical slide having a diameter substantially the same as the diameter of the handle, as recited in Claim 1 and dependent Claim 7. Therefore, the rejection of Claim 7 is inappropriate.

The arguments set forth above with regard to Claim 7 apply equally well to dependent Claims 10, 12 , 18, 24 and 25. Therefore, the rejection under Section 103(a) over the Kallassy patent is inappropriate.

Regarding process Claim 26, the Kallassy publication does not teach or suggest gripping a handle with the one hand and gripping a slide with the other hand, with both elbows bent, as recited in Claim 26. To the contrary, the Kallassy publication teaches away from bending the lower elbow at page 10, lines 9–14; page 4, lines 14–19; page 9, lines 25–27; page 10, line 24 to page 11, line 2 and Fig. 7C, among other places. Therefore, the rejection of Claim 26 and dependent Claim 27–32 is inappropriate, and the rejection under Section 103(a) over the Kallassy publication should now be withdrawn.

Claim 4 stands rejected under 35 U.S.C. Section 103(a) as being unpatentable over the Mollica patent in view of the Bratt patent. However, as set forth in greater detail above, the Mollica patent does not teach that the diameter of the slide is substantially the same as the diameter of the handle, as recited in dependent Claim 4. Additionally, the Mollica patent is silent on the subject of means positioned on the shaft adjacent to the handle for stopping

movement of the slide in the direction of the handle, as recited in Claim 1 and dependent Claim 4. The Mollica patent also lacks teaching regarding first and second buffers affixed to the end of the slide, as recited in Claim 1 and dependent Claim 4. Moreover, while the Mollica patent describes a weighted member 20 having a bore 26, the Mollica patent is silent on the subject of a hollow shaft, as recited in Claim 4.

The Bratt patent cannot cure these deficiencies of the Mollica patent, because the Bratt patent is silent on the subject of a slide, generally. Therefore, the rejection of Claim 4 under Section 103(a) over the Mollica patent and the Bratt patent is inappropriate and should be withdrawn.

Claim 15 stands rejected under 35 U.S.C. Section 103(a) as being unpatentable over the Kallassy publication in view of the Bratt patent. However, as explained in greater detail above, the Kallassy Publication is not relevant prior art to the subject application, does not include enabling teaching regarding a batter swing trainer, and cannot properly be combined with a disclosure describing a batter swing trainer.

Additionally, the Kallassy publication does not teach a generally cylindrical handle sized to accommodate both of a user's hands, as recited in claim 1 and dependent Claim 15. Also, the Kallassy publication does not teach first and second buffers affixed to the ends of a slide, as recited in Claim 1 and dependent Claim 15. Therefore, the rejection of Claim 15 under Section 103(a) over the Kallassy publication and the Bratt patent is inappropriate and should be withdrawn.

The arguments set forth in favor of the patentability of Claim 1 apply equally well to additional independent Claims 33 and 34.

Reconsideration of the subject application is respectfully requested. Allowance of the subject application, including all pending claims, and prompt passage to issue are courteously solicited.

Respectfully submitted,

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Charles A. Laff, Reg. No. 19,787
Robert A. Yesukevich, Reg. No. 36,064
Michael Best & Friedrich LLC
401 N. Michigan Avenue, Suite 1900
Chicago, IL 60611
(312) 222-0800
fax: (312) 222-0818

Attorneys for Applicant

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Specification:

At page 6, lines 3–5:

The grip handle resembles that of a conventional baseball bat handle. The shaft and the handle may be composed, for example, of aluminum or a metal alloy. A leather wrap, foam grip or other suitable material covers the handle to give the user a comfortable non-slip surface to hold.

At page 9. lines 7–10:

A stop 22 is attached to the shaft 12 by an epoxy glue, a stand roll, shear or spring pin 17 or other suitable means, adjacent to the handle 14. The shaft 12, end cap 18, and stop 22 can be made of aluminum, plastic or other suitable material.

At page 11, lines 15–18:

If desired, the batting trainer of this invention may be made with varying sized handles and grips to accommodate people with varying hand sizes. The head is adapted to receive interchangeable weighted members selected from the group consisting of 12, 16, 20, 26 and 32 ounces. The handle is removable and interchangeable with handles of differing sizes and weights. Various lengths for shafts 12 may also be used, and interchangeable heads 16 and the cap 40 may be made with varying weights to alter the difficulty level of the swing trainer 10.

At page 12, lines 16–22, please amend the paragraph as follows:

As the user becomes increasingly proficient using the swing trainer 10, the user can increase the resistance of the trainer 10 by increasing the weight of the rod 40 inside the shaft 12, or both. The handle is removable and interchangeable with handles of differing sizes and weights. As a user's skill and physical requirements change, the size of the handle 14, the length of the shaft 12 or the weight of the bat head 16 can be altered to accommodate the changes.

In the Claims:

1. (Amended) A baseball batting swing trainer comprising:

a shaft having a substantially uniform circumference and first and second ends;

a generally cylindrical handle attached to the first end and sized to accommodate both of a user's hands;

the second end having an area of increased circumference relative to the remainder of the shaft;

a generally cylindrical slide mounted on the shaft and movable between the first and second shaft ends, the diameter of the slide being substantially the same as the diameter of the handle;

means positioned on the shaft adjacent to the handle for stopping movement of the slide in the direction of the handle; and

first and second buffers affixed to the ends of the slide to control movement of the slide on the shaft.

14. (Amended) The article of claim 13 wherein the head is adapted to [have varying weights] receive interchangeable weighted members.

16. (Amended) The article of claim [13] 1 wherein the area of increased circumference on the second end of the shaft is a head, which is removably attached to the shaft and can be interchanged with heads of differing weights.

19. (Amended) The article of claim 1, wherein [the slide has means on one end for contacting the stopping means and protecting the user's hands from being pinched] at least one of the first and second buffers has a diameter that is larger than the diameter of the slide.

20. (Amended) The article of claim 19, wherein the [slide has means on the other end for contacting the head and protecting the user's hands from being pinched] buffers each have a diameter that is larger than the diameter of the slide.

26. (Amended) A process for teaching a person the proper technique for swinging a baseball bat using a batting swing trainer including a shaft having first and second ends, the first end containing a handle, the second end containing an area of increased circumference, a stop positioned on the shaft adjacent to the handle, and a slide movable between the first and second position, the process comprising:

gripping the handle with one hand and gripping the slide with the other hand with both elbows bent; and

[and] swinging the trainer while simultaneously moving the slide from the first position where it is adjacent to the second end to the second position where the slide is adjacent the stop.

REGISTRATION NUMBERS

Charles A. Laff	Reg. No. 19,787
J. Warren Whitesel	Reg. No. 16,830
Larry L. Saret	Reg. No. 27,674
Martin L. Stern	Reg. No. 28,911
Louis Altman	Reg. No. 19,373
Barry W. Sufrin	Reg. No. 27,398
Marshall W. Sutker	Reg. No. 19,995
Kevin C. Trock	Reg. No. 37,745
Lisa C. Childs	Reg. No. 39,937
Catherine J. Wright-Mitchell	Reg. No. 47,187
David R. Price	Reg. No. 31,557
John C. Bigler	Reg. No. 29,513
Glenn M. Massina	Reg. No. 40,081
Leon Nigohosian, Jr.	Reg. No. 39,791
Donald W. Walk	Reg. No. 29,118
Christopher B. Austin	Reg. No. 41,592
David L. De Bruin	Reg. No. 35,489
Gerald L. Fellows	Reg. No. 36,133
Joseph A. Gemignani	Reg. No. 19,482
Gregory J. Hartwig	Reg. No. 46,761
Daniel S. Jones	Reg. No. 42,697
Richard L. Kaiser	Reg. No. 46,158
Timothy M. Kelley	Reg. No. 34,201
Casimir F. Laska	Reg. No. 30,862
Edward R. Lawson Jr.	Reg. No. 41,931
Craig J. Loest	Reg. No. 48,557
Richard H. Marschall	Reg. No. 39,290
Thomas A. Miller	Reg. No. 36,871
Kevin P. Moran	Reg. No. 37,193
Thomas J. Otterlee	Reg. No. 48,652
Thomas S. Reynolds II	Reg. No. 45,262
Raye L. Shaffer	Reg. No. 47,933
Chad W. Shea	Reg. No. 48,470
David B. Smith	Reg. No. 27,595
Derek C. Stettner	Reg. No. 37,945
Billie Jean Strandt	Reg. No. 36,940
Glen A. Weitzer	Reg. No. 48,337
Sheldon L. Wolfe	Reg. No. 43,996
Paul F. Donovan	Reg. No. 39,962
Jill A. Fahrlander	Reg. No. 42,518
Grady J. Frenchick	Reg. No. 29,018
Jeffrey D. Peterson	Reg. No. 49,038
Sara Vinarov	Reg. No. 48,524
Teresa J. Welch	Reg. No. 33,049
Robert A. Yesukevich	Reg. No. 36,064
Sean S. Swidler	Reg. No. 49,033